REVENUE-RELATED PROVISIONS OF S. 1567
(WATER RESOURCES DEVELOPMENT ACT OF 1985)

Scheduled for a Hearing

Before the

COMMITTEE ON FINANCE

on September 10, 1985

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION

September 9, 1985

JCX-18-85

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INTRODUCTION

The Committee on Finance has scheduled a public hearing on September 10, 1985, on the revenue-related provisions of S. 1567 (Water Resources Development Act of 1985). S. 1567 was reported by the Senate Committee on Environment and Public Works on August 1, 1985 (S. Rep. No. 99-126).

The first part of this document[1] describes the provisions of S. 1567 relating to the Inland Waterways Trust Fund. The second part describes the revenue-related provisions of S. 1567 concerning harbors and port development.

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[1] This document may be cited as follows: Joint Committee on Taxation, Revenue-Related Provisions of S. 1567 (Water Resources Development Act of 1985) (JCX-18-85), September 9, 1985.

I. INLAND WATERWAYS

Present Law and Background

In general, Federal expenditures for construction, operation, and maintenance costs of U.S. waterways have been financed from general revenues, rather than from fees or taxes imposed on navigation users. . the Inland Waterways Revenue Act of 1978, however, Congress imposed an inland waterways fuel excise tax, and provided for transfer of these tax revenues to an Inland Waterways Trust Fund. Amounts in the Trust Fund are available, as provided by authorization and appropriation acts, for making construction and rehabilitation expenditures for navigation on the specified waterways the commercial use of which is subject to the fuel excise tax.

The fuel tax is imposed on diesel and other liquid fuels used by commercial cargo vessels on 26 designated inland or intracoastal waterways of the United States (Code sec. 4042). Included among the specified waterways are the Mississippi River upstream from Baton Rouge, the Mississippi's tributaries, and the Gulf and Atlantic Intracoastal Waterways. The tax does not apply to fuel used by deep-draft ocean-going vessels, recreational vessels, or noncargo vessels such as passenger vessels and fishing boats.

The present tax rate of 8 cents per gallon is scheduled to increase to 10 cents per gallon on October 1, 1985. (The tax was originally enacted at 4 cents per gallon for the period October 1, 1980 through September 30, 1981, and 6 cents per gallon for the period October 1, 1981 through September 30, 1983.)

Administration Proposal

The Administration's proposed budget for fiscal year 1986 anticipated that legislation would be enacted imposing new navigation user fees to recover a larger portion of the Federal expenses of operation, maintenance, and construction relating to the Nation's inland waterways.[2] In addition, the budget recommended that beneficiaries of Federal water resource projects pay a greater share of project costs through increased non-Federal financing.

In June 1985, the Administration announced an agreement[3] with the Senate Republican leadership for a revised inland waterways financing proposal. The revised proposal would provide for an increase in the existing inland waterway fuel tax of one cent per year beginning January 1, 1988, until the tax rate reached 20 cents per gallon on January 1, 1997. Also, 50 percent of the cost of new inland navigational lock and dam construction projects would be financed from the Inland Waterways Trust Fund.

Status of Inland Waterway Trust Fund

The following table shows the budget status of the Inland Waterway Trust Fund, as initially proposed by the Administration in its fiscal year 1986 budget.

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[2] The initial Administration proposal (contained in S. 967, introduced by request) would have imposed a new user "fee" (under the Code) on commercial vessels using inland waterways. The fee (to be collected as if it were a tax under chapter 36 of the Code) would have been 0.15 cents (15 cents per $100, or 15 mils) per ton-mile, beginning October 1, 1985. Exemptions would be provided for (1) the U.S. Government, (2) State and local governments, (3) foreign nations or corporations owned by a foreign nation, and (4) dredging activities. Under S. 967, revenues from this new user fee would have been deposited in the Inland Waterways Trust Fund, and would have been in addition to the existing waterway diesel fuel excise tax.

[3] See 131 Cong. Rec. S8631-8633 (daily ed. June 21, 1985), which includes a June 20, 1985, letter from the Office of Management and Budget. See also Administration testimony before the House Committee on Ways and Means, September 5, 1985 (joint statement of Robert K. Dawson, Acting Assistant Secretary of the Army (Civil Works), and Richard A. Abbey, Chief Counsel, U.S. Customs Service).

Inland Waterways Trust Fund, Amounts Available for Appropriation, Fiscal Years 1984-1986
($ millions)

	Fiscal years		
	1984 (actual)	1985 (est.)	1986 (est.)
Unappropriated balance, start of year	91.5	133.1	192.1
Receipts			
Inland waterway fuel tax	38.5	40.0	51.0
Interest and profits on investments	3.1	19.0	25.0
User fees (new legislative proposal, as initially proposed)	---	---	196.0
Total available for appropriation	133.1	192.1	464.1
Appropriation (as initially proposed for 1986)	---	---	196.0
Unappropriated balance, end of year	133.1	192.1	268.1

S. 1567, as Reported by Committee on Environment and Public Works

S. 1567, as reported by the Senate Committee on Environment and Public Works (S. Rep. No. 99-126, August 1, 1985), provides for one-half financing of six inland waterway navigational construction projects[4] from the Inland Waterways Trust Fund. The total estimated cost of the six projects is $977.3 million.

Title VIII of S. 1567 would increase the present-law inland waterway diesel fuel excise tax from the currently scheduled 10 cents per gallon (beginning October 1, 1985) by one cent per gallon each year on January 1, 1988-1997, until reaching 20 cents per gallon for 1997 and thereafter.

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[4] The six projects are: Oliver Lock and Dam, Black Warrior-Tombigbee River, Ala. ($147.2 million); Gallipolis Locks and Dam Replacement, Ohio River, Oh. and W. Va. ($256 million); Lock and Dam 7 Replacement, Monongahela River, Pa. ($95.1 million); Lock and Dam 8 Replacement, Monongahela River, Pa. ($68 million); Lock and Dam 26, Mississippi River, Alton, Ill. and Mo. ($220 million); and Bonneville Lock and Dam, Columbia River and Tributaries, Ore. and Wash. ($191 million).

The bill also would amend P.L. 95-502 to add a portion of the Tennessee-Tombigbee Waterway (from its confluence with the Tennessee River to its confluence with the Warrior River at Demoplis, Ala.) to the inland waterways the use of which is subject to the inland waterway diesel fuel excise tax. Further, the bill would prohibit expenditure of any Trust Fund monies for harbor or harbor components of the waterway system.

Other Congressional Action

H.R. 6, as reported by the House Committee on Public Works and Transportation (H. Rep. No. 99-251, Part 1; August 1, 1985), does not impose new taxes or increase existing tax rates in order to finance costs of inland waterways. The bill would amend section 206 of the Inland Waterways Act of 1978 (P.L. 95-502) to add the following portion of the Tennessee-Tombigbee Waterway to those waterways the use of which is subject to the present-law inland waterway diesel fuel excise tax: From Pickwick Pool on the Tennessee River at RM 215 to Demopolis, Ala., on the Tombigbee River at RM 215.4.

Title II of H.R. 6 specifies seven inland waterway navigational projects[5] to receive partial financing from the Inland Waterways Trust Fund. The total estimated cost of these seven projects is $1,151 million. The bill instructs that these projects are to be completed within seven years after the funds are first appropriated for the project. One-third of such construction costs[6] are to be paid only from Trust Fund appropriated monies. The remaining two-thirds is to be appropriated from the general fund of the Treasury.

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[5] These are the same projects as in S. 1567 (see note 4, supra), plus the Winfield Locks and Dam, Kanawha River, W. Va., is included in H.R. 6.

[6] In addition, H.R. 6 provides Trust Fund financing for one-sixth of the costs of required relocations of oil, natural gas or other pipeline, electric transmission cable or line, communications cable or line, and related facilities. One-third of such relocation costs are to be paid only from the general fund, with the remaining one-half to be paid by the owner of the relocated pipeline, cable, line, or facility.

II. HARBORS AND PORT DEVELOPMENT

Present Law and Background

Expenditures for harbors and ports

Federal expenditures for harbors and port development historically have been financed from general revenues. No user taxes or fees have been imposed for these specific expenditures. (See above discussion in Part I concerning specific user taxes imposed for certain costs of the inland and intracoastal waterways.)

Customs duties

Customs duties generally have been deposited in the general fund of the Treasury, and not dedicated to specific expenditure purposes. However, in 1980 (title III of P.L. 96-451), the Reforestation Trust Fund was established, and receipts from import duties on plywood and lumber were transferred to this Trust Fund of up to $30 million per year for six fiscal years (1980-1985). Thus, import duties on plywood and lumber are scheduled to revert to the general fund beginning October 1, 1985.

Administration Proposal

The Administration's initial proposal (contained in S. 534, introduced by request) did not include specific Federal user taxes or fees for financing harbors and port development and maintenance. S. 534 did include requirements for "cost sharing" by non-Federal interests for such projects.

In June 1985, the Administration announced an agreement[7] with the Senate Republican leadership of a proposal for a 0.04 percent (4 mils, or 4 cents per $100) ad valorem excise tax on cargo loaded and unloaded at U.S. harbors to recover up to 40 percent of Corps of Engineers harbor operations and maintenance expenditures. Monies raised by this new tax would be deposited in a newly established trust fund for such expenditures. This tax would be in addition to certain cost-sharing requirements for non-Federal contributions to project costs.

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7 See note 3, supra.

S. 1567, as Reported by the Committee on Environment and Public Works

Harbor maintenance fee and trust fund

S. 1567 (Title VIII), as reported on August 1 by the Senate Committee on Environment and Public Works, would impose a new 0.04 percent "fee" (4 cents per $100) on the value of cargo[8] loaded and unloaded at commercial harbors in the U.S., including Great Lakes harbors. In addition, a "fee" of $0.005 (one-half cent) per net registered ton would be imposed on the use of any commercial harbor (including Great Lakes) for a purpose other than loading or unloading cargo (including convenience, bunkering, refitting or repair). This latter fee could be imposed no more than three times on a vessel in a fiscal year.

Revenues from these fees would be deposited in a new Harbor Maintenance Trust Fund, to be used to finance up to 40 percent of the Federal costs of commercial harbor operation and maintenance (including Great Lakes navigation improvements), and for 100 percent of annual eligible operation and maintenance costs of the St. Lawrence Seaway operated by the St. Lawrence Seaway Development Corporation.[9]

Payment of fee; trust fund management

Payment of fee.--The fees under S. 1567 are to be paid by the owner of the cargo or agent. The fees are to be collected, except for the Great Lakes, at the point of loading for foreign-bound cargo, and at the point of unloading for all other cargo. Within the Great Lakes, the fees are to be collected at points designated by the Secretary of the Treasury. The method of administering the fee is left to the discretion of the Secretary of the Treasury. The committee report (p. 10) indicates that the U.S. Customs Service appears to be a logical and suitable collection agency, but this is not mandated.

Trust Fund management.--The Trust Fund is to be managed by the Secretary of the Treasury, who is to report annually to Congress on the operation and status of the Trust Fund during the preceding fiscal year and on the expected operation and status of

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[8] Unprocessed fish and aquatic animals fresh caught during a shipping voyage are to be exempt from the fee.

[9] To the extent that the charge or toll levied on a vessel for use of the St. Lawrence Seaway payable to or on behalf of the U.S. is in addition to or exceeds the fee imposed by S. 1567, the collection of the U.S. Seaway charge or toll is waived. Also, the St. Lawrence Seaway Corporation is to remit to the Treasury all revenues from seaway charges or tolls.

the Trust Fund during the following three fiscal years.

Non-Federal cost-sharing and fees

Cost-sharing.--S. 1567 would require proportionate cost-sharing by non-Federal interests for construction costs of any new harbor improvement project, as indicated below, plus payment of an additional 10 percent of construction costs, with interest, over a period of up to 30 years after completion.

Type and depth of port	Non-Federal cost share
1. Shallow ports: up to 20 feet	10% of cost of construction.
2. General cargo ports: 20-45 feet	10% of cost of construction for 20 feet or less, and 25% of cost of portion at depth of 20-45 feet.
3. Deep ports: more than 45 feet	10%, up to 20 feet; 25%, 20-45 feet; and 50% of cost of portion at depth of more than 45 feet.

Also, the bill would require that a non-Federal sponsor agree to pay 50 percent of the costs of studies of proposed commercial harbor projects before the Federal agency would initiate a study.

Non-Federal authority to collect fees.--S. 1567 (Title VI) would authorize the non-Federal sponsor of a harbor construction project to collect fees to cover its share of the project's costs, plus 50 percent of the incremental maintenance costs at below 45 feet for a harbor. (The non-Federal sponsor would be responsible for the 50-percent maintenance costs at below 45 feet.)

Such fees are to reflect to a reasonable degree the benefits provided to a particular class or type of vessel, and are not to be imposed on vessels owned or operated by the U.S. Government, State or local governments, foreign governments or foreign government corporation, vessels engaged in dredging activities or in intraport movements, and vessels with design drafts of 14 feet or less when utilizing projects (harbors) of from 20-45 feet and deeper than 45 feet.

Other Congressional Action

General tax and trust fund provisions

As reported by the House Committee on Public Works and Transportation on August 1, 1985, H.R. 6 (Title XIII) would establish a new Port Infrastructure Development and Improvement Trust Fund. The Trust Fund would receive revenues from a new 0.04 percent tax (as imposed by the bill) on the value of cargo[10] loaded or unloaded at U.S. ports, plus an amount equal to customs duties collected each year which when combined with revenues from the cargo tax would total $1 billion. These provisions would be effective beginning on October 1, 1985 (fiscal year 1986).

Amounts in the Trust Fund would be available for planning (including feasibility studies), construction, operation, and maintenance costs of authorized port projects and St. Lawrence Seaway port projects, as well as for relocation of utilities, structures and other improvements necessary for construction, operation and maintenance of port projects.

Payment of cargo tax; trust fund management

Payment of cargo tax.--The cargo tax imposed under H.R. 6 is to be paid by the importer in the case of cargo imported into the customs territory of the U.S., by the exporter in the case of cargo exported from the U.S., and by the shipper in the case of any other cargo loaded on a vessel at a port in the U.S. (i.e., shipping between U.S. ports). The tax is to be paid only once with respect to any cargo; for example, goods transported between U.S. ports would be taxed only once.

Trust fund management.--The Secretary of the Treasury is to manage the Trust Fund and to report to the Congress each year on the financial condition and operation of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next five fiscal years.

Non-Federal fees

Deep-draft port fees.--H.R. 6 (Title I) gives the consent of Congress (under clauses 2 and 3 of section 10 of Article I of the Constitution) to the levy by a non-Federal

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[10] The Committee on Public Works and Transportation report indicates that the tax is not to be imposed on the initial landing of U.S. harvested fish and seafood, but that fish and seafood imported or exported are to be subject to the tax.

interest of certain cargo tonnage fees on vessels entering a deep-draft port (i.e., only on vessels requiring a channel with a depth of more than 45 feet).

The tonnage fees may only be levied to (1) reimburse the Federal Government for the non-Federal share of construction and operation and maintenance costs of a deep-draft port navigation project authorized under Title I of the bill, or (2) provide emergency response services in the port (except tonnage fees may not be levied for (2) if they cease to be levied for (1)). Such fees may not be levied on a vessel not engaged in commercial service owned and operated by the United States, by a State or political subdivision, or by another nation or subdivision.

H.R. 6 also provides for the Comptroller General of the U.S. (GAO) to carry out periodic audits of the operations of non-Federal interests that elect to levy such port tonnage fees, and to report and make recommendations to the Congress with respect to the compliance of the non-Federal interests with these requirements.

Federal guarantees of non-Federal obligations.--Title I of H.R. 6 also authorizes a Federal guarantee of the payment of the interest on, and the unpaid balance of the principal of (up to a $1 billion limit), any obligation issued by a non-Federal interest to finance a navigation project authorized for a port by Title I or any other subsequent law that is subject to a requirement for non-Federal contribution to the cost. A guarantee fee is authorized of not less than 0.25 percent per year of the average principal amount of an outstanding guaranteed obligation. Such fees are to be deposited in a special fund, the "Federal Port Navigation Project Financing Fund", for use in payment of defaults of such non-Federal obligations.

Non-Federal shares of port costs.--Title I of H.R. 6 provides for non-Federal cost-sharing according to the depth of the port, as follows:

	Type and depth of port	Non-Federal cost share
1.	Shallow ports: 14-20 feet	10% of cost of construction.
2.	General cargo ports: 20-45 feet	10% of cost of construction for 14-20 feet or less, and 25% of cost of portion at depth of 20-45 feet.
3.	Deep ports: more than 45 feet	10%, up to 20 feet; 25%, 20-45 feet; and 50% of cost of portion at depth of more than 45 feet.

For any port, the non-Federal interests must also provide necessary lands, easements, rights of way, and dredged spoil disposal areas, but only to the extent that such costs do not exceed five percent of the project costs. The non-Federal interests must also construct items such as berthing areas and access channels (which count towards the non-Federal share).